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FROM:

Joseph Padellaro

DATE:

*May 29 2001*Please deliver the following 5 page(s) and this cover page to:

NAME:

Steven P. Hend

FIRM:

CITY/STATE:

FAX NO.:

312 886 0747

COMMENTS:

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May 29, 2001

VIA FACSIMILE AND U.S. MAIL
(312) 886-0747

Mr. Stuart P Hersh
Office of Regional Counsel
USEPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Re: J. Pitt Melt Shop Site
3151 S. California Ave., Chicago, Illinois

Dear Mr. Hersh:

We represent M.S. Kaplan Company ("Kaplan"). We are in receipt of your letter of May 16, 2001, accompanying the United States Environmental Protection Agency's proposed Administrative Order on Consent ("AOC") directed to Kaplan and the Metropolitan Water Reclamation District of Greater Chicago ("MWRD") in connection with a CERCLA removal action at the above-referenced property. Representatives of Kaplan and the MWRD met on May 21 to discuss the proposed AOC. Based upon this meeting, Kaplan and the MWRD (referred to collectively as the "Respondents") jointly offer the following modifications to the proposed AOC for your consideration.

Section I. Jurisdiction and General Provisions

The Respondents suggest no changes to this section.

Section II. Parties Bound

The Respondents suggest no changes to this section.

Section III. Findings of Fact

As a preliminary matter, the Respondents request that the Administrative Record for this matter referenced in the opening paragraph of this section be made available for the Respondents' review.

The Respondents suggest no changes to Paragraphs 1, 2, 4, 5 and 8.

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Paragraph 3 is factually incorrect. The MWRD and Ketler-Elliott Erection Co. entered into a 99-year lease of the property in 1918. In 1923, this lease was assigned to Hansell-Elcock Company. In 1961, Hansell-Elcock Company assigned the lease to California Auto Reclamation Co., more than 50% of which was owned by M.S. Kaplan.

In Paragraph 6, delete the phrase "possibly contaminated with polychlorinated biphenyls (PCBs)" from the second sentence. Although one sample taken from the property revealed PCBs to be present at the site, there is no evidence of the presence of PCBs in the oil purportedly being released into the Sanitary & Ship Canal. Also, insert the word "perceived" before the word "immediate" in the last sentence.

In Paragraph 7, replace "PCBs (54,000ppm) leaking from a capacitor on the floor" appearing in the seventh line with "Resinous material, containing 54,000 ppm of PCBs, spilled from a capacitor." Insert the word "and" before "oils" in the tenth line, and delete "and solvents." Add "and" before "Cesium-137" in the tenth line, and end that sentence after "devices" in the following line. Delete the remainder of that sentence ("and friable asbestos containing material in pipe insulation").

Section IV. Conclusions of Law and Determinations

The Respondents suggest no changes to Paragraphs 1 through 5.

With respect to Paragraph 6, only those factors that apply should be identified in this section, consistent with U.S. EPA guidance on AOCs. The Respondents believe that neither factor 6(b) ("Actual or potential contamination of drinking water supplies or sensitive ecosystems") nor factor 6(g) ("The unavailability of other appropriate federal or state response mechanisms to respond to the release") apply to this site and constitute a basis for the finding of a threat to public health, welfare or the environment under the NCP. We therefore suggest that these two paragraphs be deleted.

In Paragraph 6(a), delete "the lack of a security fence that would minimize" in the second line and replace with "an unlocked security gate which increases." Replace "over 300 drums and small containers" in the third and fourth line with "containers, including approximately 124 55-gallon drums, 37 25-gallon and 5 gallon drums and approximately 150 smaller containers." In line 6, add the word "and" before "caustics" and delete "and solvents." Delete the third and fourth sentences of this paragraph, and replace with "Resinous material, containing 54,000 ppm of PCBs, appeared to have spilled from a capacitor." In the third line from the bottom delete "cadmium (600 ppm)." We have been provided with no laboratory analysis reports supporting this statement. The 600 ppm figure appears on a summary of XRF analyses, which is a field screening procedure. Finally, in the last line replace "Many of the raw products remaining" with "Exposed raw products in damaged containers."

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In Paragraph 6(c), we disagree that the containers are "abandoned" throughout the facility. Although they may have been at one time, the drums and containers have now been staged in one area of the building. We also disagree that "many" of these containers are in "poor" condition and resulted in spills. Based upon our inspection, none of the containers was—or is—leaking. Delete the term "various solvents" appearing in the second line of page 5. Replace the final sentence of Paragraph 6(c) with "Resinous material, containing 54,000 ppm of PCBs, appeared to have spilled from a capacitor."

The scrap steel storage area referred to in Paragraph 6(d) is not part of the J. Pitt Melt Shop facility. Therefore, this factor is not present at the site.

The Respondents suggest no changes to Paragraphs 6(e) and 9(f), nor to the remainder of Section IV.

Section V. Order

The Respondents suggest no changes to Section V.1., except they request in the last sentence of the first paragraph of this section that they be given 5 business days, rather than 2, to retain a replacement contractor.

In Section V.2., the Respondents suggest no changes to subparagraphs a, b, c, e, f, h, i and j. We suggest that Section V.2.d be replaced with the following: "Stage, sample and secure the following site wastes and residual materials: (i) wastes in all 55-gallon drums and smaller containers; (ii) baghouse dust; (iii) liquids in pits and sumps; (iv) damaged raw materials; and (v) radioactive materials." We further suggest that Section V.2.g be replaced with the following: "Evaluate soils and determine appropriate methods for stabilization and/or disposal, if necessary." Finally, we suggest that Sections V.2.k. and V.2.l. be deleted as being unnecessary. The U.S. EPA's authority to require additional action in order to protect public health and the environment is expressly reserved in Section XI.

The Respondents suggest no changes to the remainder of Section V.

Section VI. Authority of the U.S. EPA On-Scene Coordinator

The Respondents suggest no changes to this section.

Section VII. Reimbursement of Costs

All invoices sent to the Respondents for payment, whether for past costs or for future oversight costs, must be accompanied by supporting documentation. The time period for payment

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does not begin to run until the U.S. EPA certifies that all supporting documentation has been provided to the Respondents.

Section VIII. Dispute Resolution

Please advise as to whether a decision of the Director of the Superfund Division, Region 5 pursuant to this provision is subject to any administrative or judicial review.

Section IX. Force Majeure

The Respondents suggest no changes to this section.

Section X. Stipulated and Statutory Penalties.

The Respondents believe that only the failure to perform the work in accordance with established schedules should be the subject of this provision. We therefore suggest that the terms "in a manner acceptable to the U.S. EPA" be deleted from the first three listed events triggering the payment of stipulated penalties, and that the fourth listed event be deleted in its entirety. The Respondents also suggest that the amount of the per diem penalty be reduced from \$1,500/\$3,000 to \$500/\$1,000.

Section XI. Reservation of Rights

The Respondents suggest no changes to this section.

Section XII. Other Claims

The Respondents suggest no changes to this section.

Section XIII. Covenant Not to Sue

The Respondents suggest no changes to this section.

Section XIV. Contribution Protection

The Respondents suggest no changes to this section.

Section XV. Indemnification

The Respondents suggest no changes to this section.

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Page 5**Section XVI. Modifications**

The Respondents suggest no changes to this section.

Section XVII. Notice of Completion

The Respondents suggest no changes to this section.

Section XVIII. Severability

The Respondents suggest no changes to this section.

Section XIX. Effective Date

The Respondents suggest no changes to this section.

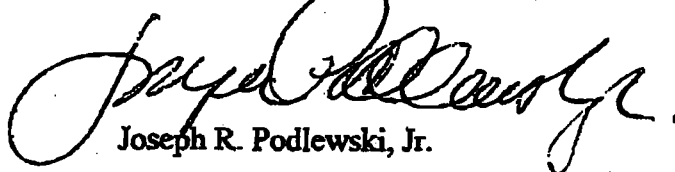
Section XX. Notice (new)

Finally, the Respondents suggest that a provision be added identifying those individuals to whom notices are to be provided under the AOC. For the MWRD, notice should be provided to Ms. Susan Morakalis, Senior Assistant Attorney. For Kaplan, notice should be provided to the undersigned.

We thank you for your consideration of these proposed changes.

Very truly yours,

ROSENTHAL AND SCHANFIELD


Joseph R. Podlewski, Jr.

cc: Mr. Steven Kaplan
Mr. Lawrence Fieber
Ms. Susan Morakalis, MWRD
Fax (312) 751-6598

Phone 6557